

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

Atlantic Pinstriping, LLC, and)
Michael Montemurro,)
)
Plaintiffs,)
)
v.)
)
Atlantic Pinstriping Triad, LLC,)
Atlantic Dealer Services Coastal, LLC,)
Tony Horne,)
William E. Horne, and)
Jerry W. Parker,)
)
Defendants.)
)

Case No. 3:16-CV-547-GCM

**PLAINTIFFS' UNOPPOSED
MOTION TO CONFIRM
ARBITRATION AWARD**

Pursuant to 9 U.S.C. § 9 and LCvR 7.1, Plaintiffs Atlantic Pinstriping, LLC (“Atlantic”) and Michael Montemurro (collectively, “Plaintiffs”) move to confirm the final Arbitration Award entered by the arbitrator of this dispute on April 19, 2018. In support of this Motion, Plaintiffs show the Court the following:

1. On July 13, 2016, Plaintiffs initiated this action by filing a Complaint against Defendants Atlantic Pinstriping Triad, LLC (“APT”), Atlantic Dealer Services Coastal, LLC (“ADSC”), Tony Horne, William E. Horne, and Jerry W. Parker.

2. On September 12, 2016, this Court entered an Order finding that it had “federal subject matter jurisdiction in this case” pursuant to principles of federal question jurisdiction and supplemental jurisdiction. (Doc. 28)

3. On September 23, 2016, this Court entered a Preliminary Injunction Order requiring Defendants to, among other things, comply with the post-termination obligations of their franchise agreements, including but not limited to their restrictive covenants. (Doc. 32).

4. On November 2, 2016, this Court entered an Order staying this matter “until . . . a final arbitration award is entered, with the exception of any motions or other proceedings to enforce compliance with the Preliminary Injunction Order.” (Doc. 35).

5. On September 27, 2017, Plaintiffs filed a Motion for an Order to Show Cause why the individual Defendants should not be held in contempt of court for violating the Court’s preliminary injunction (the “Contempt Motion”). (Doc. 41). The Contempt Motion is still pending.

6. Following an arbitration proceeding held on January 9–12, 2018, in Charlotte, North Carolina, the arbitrator on April 19, 2018, issued a final Arbitration Award. (Fifth DeAntonio Decl. Ex. 1).¹ The final Arbitration Award provided for the following relief:

- a. Defendants owe Plaintiffs \$48,399.42. Defendants Tony Horne, Ernie Horne, Jerry Parker, and APT are jointly and severally liable for the entire award. Defendant ADSC is jointly and severally liable for \$26,853.00 of the award.
- b. Defendants shall immediately pay the net sum owed.
- c. Plaintiffs are entitled to a permanent injunction as follows:
 - i. Defendants are prohibited from soliciting or attempting to solicit any of their former customers, Atlantic’s customers, or any customers of Atlantic’s affiliates or franchisees.
 - ii. Defendants are prohibited from providing vehicle pinstriping services within 25 miles of 309E Unionville Indian Trail Road, Indian Trail, NC 28079. A map depicting this restricted territory is attached to the Amended Arbitration Award as Exhibit A. To the

¹ The Fifth Declaration of Matthew S. DeAntonio, which attaches the final Arbitration Award as Exhibit 1, is being filed concurrently with this Motion.

extent there is any ambiguity, this verbal description of the territory supersedes the map attached as Exhibit A.

- iii. Defendants are prohibited from providing vehicle pinstriping services within 25 miles of the territories of Atlantic's other franchisees, depicted in the maps attached to the Amended Arbitration Award as Exhibit B. By agreement of the parties, this restriction shall not apply to the city limits of Fayetteville, North Carolina. To the extent there is any ambiguity, the verbal descriptions of the territories supersede the maps attached as Exhibit B.
- iv. The covenants in subsections (i)–(iii) above shall run from June 14, 2016, until June 14, 2018.
- v. Defendants shall cease to be franchisees of Atlantic and shall not use Atlantic Pinstriping, LLC's trademarks. Defendants shall not, directly or indirectly, represent to the public that they are in any way connected with the Atlantic Pinstriping, LLC franchise system or hold themselves out as Atlantic Pinstriping, LLC franchisees for any purpose whatsoever.
- vi. Defendants shall return to Atlantic Pinstriping, LLC any equipment they have not yet returned pursuant to the Equipment Leases.

7. Pursuant to 9 U.S.C. § 9, any party to the arbitration is entitled to apply to this Court to confirm the arbitration award.

8. Pursuant to LCvR 7.1(b), Plaintiffs' counsel consulted with Defendants' counsel prior to filing this Motion. Defendants' counsel stated that Defendants do not oppose the motion.

9. Because the Contempt Motion remains outstanding, confirmation of the Arbitration Award will not completely resolve this dispute. After the Contempt Motion is heard by the Court, Plaintiffs will seek a final judgment based on any additional relief that may be awarded based on the Contempt Motion.

10. This Motion is further based on the supporting brief that is being filed concurrently with this Motion, and any additional materials that may be submitted to the Court prior to a ruling on this Motion.

WHEREFORE, Plaintiffs request that the Court grant the following relief:

- A. Confirm the final Arbitration Award pursuant to 9 U.S.C. § 9; and
- B. Award such other relief that the Court deems just and proper.

Respectfully submitted this 30th day of April, 2018.

BRADLEY ARANT BOULT CUMMINGS LLP

/s/ Matthew S. DeAntonio

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CERTIFICATE OF SERVICE

I certify that I served the foregoing document, PLAINTIFFS' UNOPPOSED MOTION TO CONFIRM ARBITRATION AWARD, upon all parties of record by electronic filing.

Date: April 30, 2018

/s/ Matthew S. DeAntonio

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